

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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KRISTINA KRAFT,

Plaintiff,

v.

20-CV-1302-JLS-JJM

NFNY HOTEL MANAGEMENT LLC,

Defendant.

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**DECISION AND ORDER**

Plaintiff Kristina Kraft commenced this action in the United States District Court for the Southern District of New York on April 3, 2020, raising a series of claims under New York Labor Law and General Business Law. Dkt. 1. On September 15, 2020, with the consent of the parties, the case was transferred to the Western District of New York. Dkts. 35, 37. On September 16, 2020, this Court referred the case to United States Magistrate Judge Jeremiah McCarthy for all pre-trial matters excluding dispositive motions, *see* Dkt. 38, and, on April 22, 2021, an additional referral was made to include dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), *see* Dkt. 67.<sup>1</sup>

Presently before the Court is Judge McCarthy's November 22, 2022 Report and Recommendation ("R&R") (Dkt. 135) addressing Defendant NFNY Hotel

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<sup>1</sup> This Court previously reviewed and accepted Judge McCarthy's amended Report and Recommendation and Order (Dkt. 69) that recommended denial of Kraft's motion for leave to amend the complaint and denied Kraft's request to extend the deadlines of the scheduling order. *See* Dkt. 75. This Court assumes the parties' familiarity with the details of this case, outlined in the R&Rs and prior decisions.

Management LLC (“NFNY”)’s motion for summary judgment (Dkt. 109) and Kraft’s motion for partial summary judgment (Dkt. 113). Specifically, Judge McCarthy recommended granting NFNY’s motion for summary judgment as to the first and seventh causes of action (violations of N.Y. Labor Law § 196-d and § 195(1)), and granting Kraft’s motion for summary judgment as to the sixth cause of action (violation of N.Y. Labor Law § 195(3)) along with \$5,000 in statutory damages.<sup>2</sup> Dkt. 135.

Both parties filed timely objections to the R&R. Dkts. 136, 138. Briefing on the objections was complete on January 6, 2023. Dkts. 143, 144, 145, 146.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). It must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The Court has carefully reviewed the R&R, the objections and responses, and the relevant record in this case. Based on that review, the Court accepts and adopts Judge McCarthy’s recommended disposition of the motions.

The Court addresses one additional point regarding Kraft’s sixth cause of action and the issue of NFNY’s affirmative defense. Even assuming this Court were to exercise its discretion, under these facts and circumstances, to reach the Section

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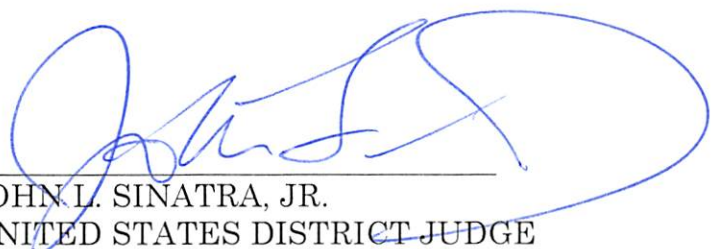
<sup>2</sup> Upon agreement of the parties, the remaining causes of action—two through five—have been dismissed. Dkts. 34-36. Further, Plaintiff abandoned her putative class claims, Dkt. 76, and the parties also stipulated to dismiss Marriott International, Inc., as a defendant. Dkt. 107. Thus, the instant motions and R&R addressed the first, sixth, and seventh cause of action against NFNY only.

198 affirmative defense as a matter of fairness, *see Astor Holdings v. Roski*, 325 F. Supp. 2d 251, 260 (S.D.N.Y. 2003); *Curry v. City of Syracuse*, 316 F.3d 324, 330-31 (2d Cir. 2003); *Saks v. Franklin Covey Co.*, 316 F.3d 337, 350-51 (2d Cir. 2003); *Estate of Hamilton v. City of N.Y.*, 627 F.3d 50, 58 (2d Cir. 2010); *Reives v. Lumpkin*, 632 F. App'x 34, 35 (2d Cir. 2016), summary judgment to Plaintiff on the sixth cause of action is still required on this record, and as indicated in the parties' objections, including the evidence at Dkt. 118-6 (Exh. E), Kraft Dep. 26:1-33:23; Dkt. 118-8 ¶¶ 49-50; Dkt. 109-3 (Exh. B), Kraft Dep. 180:2-181:22, 189:1-190:11, 332:1-12.

For the reasons stated above and in Judge McCarthy's R&R, Kraft's motion for partial summary judgment (Dkt. 113) is GRANTED, insofar as she is awarded \$5,000 in statutory damages on her sixth cause of action; and NFNY's motion for summary judgment (Dkt. 109) is GRANTED to the extent that the first and seventh causes of action are dismissed. The case is referred back to Judge McCarthy for further proceedings, including any determinations as to attorney's fees and costs, consistent with the referral orders in this case. Dkts. 38, 67.

SO ORDERED.

Dated: January 24, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE